



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2005 REGULAR SESSION

SENATE BILL NO. 209

AS ENACTED

MONDAY, MARCH 21, 2005

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to health insurance and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.14-500 is amended to read as follows:

For the purpose of KRS 304.14-510 to 304.14-550:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group Medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) "Certificate" means, for the purposes of KRS 304.14-510 to 304.14-550, any certificate issued under a group Medicare supplement policy, which policy has been delivered or issued for delivery in this state.

(3) "Medicare supplement policy" means a group or individual policy of (accident and sickness) insurance or a subscriber contract (of hospital and medical service associations or health maintenance organizations) other than a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. secs. 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. sec. 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. Such policy~~[term]~~ does not include:

(a) Medicare Advantage plans established under Medicare Part C;~~[A policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or]~~

1 (b) Prescription drug plans established under Medicare Part D; or

2 (c) Health care prepayment plans that provide benefits pursuant to an

3 agreement under 42 U.S.C. sec. 1395l(a)(1)(A)~~[A policy or contract of any~~

4 ~~professional, trade, or occupational association for its members or former or~~

5 ~~retired members, or combination thereof, if such association:~~

6 1. ~~Is composed of individuals all of whom are actively engaged in the same~~

7 ~~profession, trade, or occupation;~~

8 2. ~~Has been maintained in good faith for purposes other than obtaining~~

9 ~~insurance; and~~

10 3. ~~Has been in existence for at least two (2) years prior to the date of its~~

11 ~~initial offering of such policy or plan to its members].~~

12 (4) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the
13 Social Security Amendments of 1965, as then constituted or later amended.

14 Section 2. KRS 304.17A-095 is amended to read as follows:

15 (1) (a) Notwithstanding any other provisions of this chapter to the contrary, each
16 insurer that issues, delivers, or renews any health benefit plan to any market
17 segment other than a large group shall, before use thereof, file with the
18 commissioner its rates, fees, dues, and other charges paid by insureds,
19 members, enrollees, or subscribers. The insurer shall also submit a copy of the
20 filing to the Attorney General and shall comply with the provisions of this
21 section. The insurer shall adhere to its rates, fees, dues, and other charges as
22 filed with the commissioner. The insurer shall submit a new filing to reflect
23 any material change to the previously filed and approved rate filing. For all
24 other changes, the insurer shall submit an amendment to a previously
25 approved rate filing.

26 (b) Notwithstanding any other provisions of this chapter to the contrary, each
27 insurer that issues, delivers, or renews any health benefit plan to a large group

1 as defined in KRS 304.17A-005 shall file the rating methodology with the
2 commissioner and shall submit a copy of the filing to the Attorney General.

3 (2) (a) A rate filing under this section may be used by the insurer on and after the
4 date of filing with the commissioner prior to approval by the commissioner. A
5 rate filing shall be approved or disapproved by the commissioner within sixty
6 (60) days after the date of filing. Should sixty (60) days expire after the
7 commissioner receives the filing before approval or disapproval of the filing,
8 the filing shall be deemed approved.

9 (b) In the circumstances of a filing that has been deemed approved or has been
10 disapproved under paragraph (a) of this subsection, the commissioner shall
11 have the authority to order a retroactive reduction of rates to a reasonable rate
12 if the commissioner subsequently determines that the filing contained
13 misrepresentations or was based on fraudulent information, and if after
14 applying the factors in subsection (3) of this section the commissioner
15 determines that the rates were unreasonable. If the commissioner seeks to
16 order a retroactive reduction of rates and more than one (1) year has passed
17 since the date of the filing, the commissioner shall consider the reasonableness
18 of the rate over the entire period during which the filing has been in effect.

19 (3) In approving or disapproving a filing under this section, the commissioner shall
20 consider:

21 (a) Whether the benefits provided are reasonable in relation to the premium or fee
22 charged;

23 (b) Whether the fees paid to providers for the covered services are reasonable in
24 relation to the premium or fee charged;

25 (c) Previous premium rates or fees for the policies or contracts to which the filing
26 applies;

27 (d) The effect of the rate or rate increase on policyholders, enrollees, and

1 subscribers;

2 (e) Whether the rates, fees, dues, or other charges are excessive, inadequate, or
3 unfairly discriminatory;

4 (f) The effect on the rates of any assessment made under KRS 304.17B-021; and

5 (g) Other factors as deemed relevant by the commissioner.

6 (4) The rates for each policyholder shall be guaranteed for twelve (12) months at the
7 rate in effect on the date of issue or date of renewal.

8 (5) At any time the commissioner, after a public hearing for which at least thirty (30)
9 days' notice has been given, may withdraw approval of rates or fees previously
10 approved under this section and may order an appropriate refund or future premium
11 credit to policyholders, enrollees, and subscribers if the commissioner determines
12 that the rates or fees previously approved are in violation of this chapter.

13 (6) Notwithstanding subsection (2) of this section, premium rates may be used upon
14 filing with the department of a policy form not previously used if the filing is
15 accompanied by the policy form filing and a minimum loss ratio guarantee. Insurers
16 may use the filing procedure specified in this subsection only if the affected policy
17 forms disclose the benefit of a minimum loss ratio guarantee. An insurer may not
18 elect to use the filing procedure in this subsection for a policy form that does not
19 contain the minimum loss ratio guarantee. ~~Insurers may not amend policy forms to~~
20 ~~provide for a minimum loss ratio guarantee.~~ If an insurer elects to use the filing
21 procedure in this subsection for a policy form or forms, the insurer shall not use a
22 filing of premium rates that does not provide a minimum loss ratio guarantee for
23 that policy form or forms.

24 (a) The minimum loss ratio shall be in writing and shall contain at least the
25 following:

26 1. An actuarial memorandum specifying the expected loss ratio that
27 complies with the standards as set forth in this subsection;

- 1 2. A statement certifying that all rates, fees, dues, and other charges are not
- 2 excessive, inadequate, or unfairly discriminatory;
- 3 3. Detailed experience information concerning the policy forms;
- 4 4. A step-by-step description of the process used to develop the experience
- 5 loss ratio, including demonstration with supporting data;
- 6 5. A guarantee of a specific lifetime minimum loss ratio, that shall be
- 7 greater than or equal to the following, taking into consideration
- 8 adjustments for duration as set forth in administrative regulations
- 9 promulgated by the commissioner:
- 10 a. Sixty-five percent (65%)~~[Seventy percent (70%)]~~ for policies
- 11 issued to individuals or for certificates issued to members of an
- 12 association that does not offer coverage to small employers;
- 13 b. Seventy percent (70%) for policies issued to small groups of two
- 14 (2) to ten (10) employees or for certificates issued to members of
- 15 an association that offers coverage to small employers; and
- 16 c. Seventy-five percent (75%) for policies issued to small groups of
- 17 eleven (11) to fifty (50) employees;
- 18 6. A guarantee that the actual Kentucky loss ratio for the calendar year in
- 19 which the new rates take effect, and for each year thereafter until new
- 20 rates are filed, will meet or exceed the minimum loss ratio standards
- 21 referred to in subparagraph 5. of this paragraph, adjusted for duration;
- 22 7. A guarantee that the actual Kentucky lifetime loss ratio shall meet or
- 23 exceed the minimum loss ratio standards referred to in subparagraph 5.
- 24 of this paragraph; and
- 25 8. If the annual earned premium volume in Kentucky under the particular
- 26 policy form is less than two million five hundred thousand dollars
- 27 (\$2,500,000), the minimum loss ratio guarantee shall be based partially

1 on the Kentucky earned premium and other credibility factors as
2 specified by the commissioner.

3 (b) The actual Kentucky minimum loss ratio results for each year at issue shall be
4 independently audited at the insurer's expense and the audit shall be filed with
5 the commissioner not later than one hundred twenty (120) days after the end
6 of the year at issue. The audit shall demonstrate the calculation of the actual
7 Kentucky loss ratio in a manner prescribed as set forth in administrative
8 regulations promulgated by the commissioner.

9 (c) The insurer shall refund premiums in the amount necessary to bring the actual
10 loss ratio up to the guaranteed minimum loss ratio.

11 (d) A Kentucky policyholder affected by the guaranteed minimum loss ratio shall
12 receive a portion of the premium refund relative to the premium paid by the
13 policyholder. The refund shall be made to all Kentucky policyholders insured
14 under the applicable policy form during the year at issue if the refund would
15 equal ten dollars (\$10) or more per policy. The refund shall include statutory
16 interest from July 1 of the year at issue until the date of payment. Payment
17 shall be made not later than one hundred eighty (180) days after the end of the
18 year at issue.

19 (e) Premium refunds of less than ten dollars (\$10) per insured shall be aggregated
20 by the insurer and paid to the Kentucky State Treasury.

21 (f) None of the provisions of subsections (2) and (3) of this section shall apply if
22 premium rates are filed with the department and accompanied by a minimum
23 loss ratio guarantee that meets the requirements of this subsection. Such
24 filings shall be deemed approved. Each insurer paying a risk assessment under
25 KRS 304.17B-021 may include the amount of the assessment in establishing
26 premium rates filed with the commissioner under this section. The insurer
27 shall identify any assessment allocated.

1 (g) The policy form filing of an insurer using the filing procedure with a
 2 minimum loss ratio guarantee will disclose to the enrollee, member, or
 3 subscriber as prescribed by the commissioner an explanation of the lifetime
 4 loss ratio guarantee, and the actual loss ratio, and any adjustments for
 5 duration.

6 (h) The insurer who elects to use the filing procedure with a minimum loss ratio
 7 guarantee shall notify all policyholders of the refund calculation, the result of
 8 the refund calculation, the percent of premium on an aggregate basis to be
 9 refunded if any, any amount of the refund attributed to the payment of
 10 interests, and an explanation of amounts less than ten dollars (\$10).

11 (i) Notwithstanding the provisions of this subsection, an insurer may amend
 12 the policy forms used before the effective date of this Act or may amend the
 13 minimum loss ratio guarantee on policy forms filed with the department
 14 and used by the insurer prior to the effective date of this Act to provide for a
 15 minimum loss ratio guarantee allowed under this subsection for policies
 16 issued, delivered, or renewed on or after the effective date of this Act.

17 (7) The commissioner may by administrative regulation prescribe any additional
 18 information related to rates, fees, dues, and other charges as they relate to the
 19 factors set out in subsection (3) of this section that he or she deems necessary and
 20 relevant to be included in the filings and the form of the filings required by this
 21 section. When determining a loss ratio for the purposes of loss ratio guarantee, the
 22 insurer shall divide the total of the claims incurred, plus preferred provider
 23 organization expenses, case management and utilization review expenses, plus
 24 reinsurance premiums less reinsurance recoveries by the premiums earned less state
 25 and local premium taxes less other assessments. For purposes of determining the
 26 loss ratio for any loss ratio guarantee pursuant to this section, the commissioner
 27 may examine the insurer's expenses for preferred provider organization, case

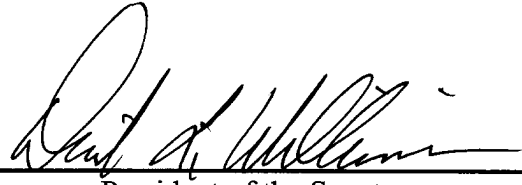
1 management, utilization review, and reinsurance used by the insurer in calculating
2 the loss ratio guarantee for reasonableness. Only those expenses found to be
3 reasonable by the commissioner may be used by the insurer for determining the loss
4 ratio for purposes of any loss ratio guarantee.

5 (8) (a) The commissioner shall hold a hearing upon written request by the Attorney
6 General. The written request shall be based upon one (1) or more of the
7 reasons set out in subsection (3) of this section and shall state the applicable
8 reasons.

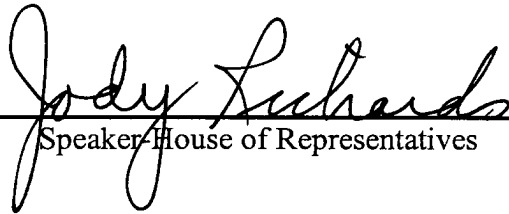
9 (b) An insurer may request a hearing, pursuant to KRS 304.2-310, with regard to
10 any action taken by the commissioner under this section as to the disapproval
11 of rates or an order of a retroactive reduction of rates.

12 (c) The hearing shall be a public hearing conducted in accordance with KRS
13 304.2-310.

14 Section 3. In order to comply with the requirements of the Medicare Prescription
15 Drug Improvement and Modernization Act of 2003, an emergency is declared to exist and
16 this Act takes effect upon its passage and approval by the Governor or upon its otherwise
17 becoming law.

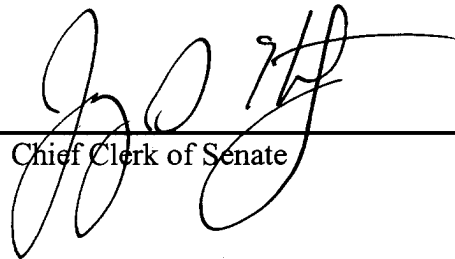


President of the Senate



Speaker House of Representatives

Attest:



Chief Clerk of Senate

Approved



Governor

Date

